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The meeting was called to order at 10 a.m.

Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Third periodic report of Latvia (continued) (CCPR/C/LVA/3; CCPR/C/LVA/Q/3 and Add.1; HRI/CORE/1/Add.123)

1. *At the invitation of the Chairperson, the members of the delegation of Latvia took places at the Committee table.*

2. **Ms. Druviete** (Latvia) said that the evaluation of the previous Domestic Violence Action Plan was not yet complete. According to a recent European Union survey, 20 per cent of Latvian women had been victims of violence at least once in their life. Social rehabilitation programmes had so far been available only for child victims of domestic violence, but funding for programmes aimed at adult victims and perpetrators of domestic violence had been approved as of January 2015. New types of restraining orders would be introduced from 2016, and notably would be available to be enforced ex officio.

3. **Ms. Pilipa** (Latvia) said that 29 per cent of members of Parliament were women, including the President. The Prime Minister and 5 out of 13 cabinet ministers, along with 5 secretaries of State, were also women. A report on the implementation of the Gender Equality Action Plan 2012–2014 would be published in 2015. Measures taken under the plan had included training for primary school teachers and awareness-raising campaigns focused on tackling stereotypes. New guidelines had been adopted for school and university curricula together with the training of teachers at all levels in an effort to promote equal opportunities. A new policy on gender equality was being devised for 2014–2020. Progress had been made in combating human trafficking, including in respect of the assistance provided to victims. A new National Strategy for the Prevention of Human Trafficking 2014–2020 had been adopted in January 2014, which provided for a variety of measures, such as awareness-raising activities among vulnerable populations, strengthened cooperation with non-governmental organizations (NGOs), risk factor analysis, media campaigns and improved information for victims. The statistics contained in the annex of the State party's written replies to the list of issues were not overly clear, but it was true to say that only female victims of trafficking had benefited from access to rehabilitation services in 2009 and 2013. Information regarding such assistance was available on the Internet and from police stations and embassies, but the victims themselves must seek it out. The number of recipients did not therefore necessarily correspond with the number of victims. The increase in the number of recipients could be explained by the improvements made in victim identification and the increase in resources allocated to such services.

4. **Mr. Volks** (Latvia) said that in regard to human trafficking Latvia was primarily a country of origin rather than a country of transit or destination. The State Police participated in prevention activities involving vulnerable groups. Article 154.2 of the Criminal Code contained a general definition of trafficking, which incorporated trafficking for the purpose of sexual exploitation. Sexual exploitation *per se* was, however, prohibited under article 165.1, which also provided for cases in which victims had given their consent. The Cabinet of Ministers had approved the establishment of a new institution to replace the Internal Security Office of the State Police, which would be responsible for internal investigations into complaints against State police officers, customs officials, prison officers and municipal police officers, under the direct supervision of the Ministry of the Interior. The institution would no longer report to the State Police Chief and would therefore enjoy greater independence.

5. **Ms. Freimane** (Latvia) said that the law provided for languages other than Latvian to be used when communicating in emergency situations with the police, prison officials,

medical professionals or the emergency services for example, and that recent amendments to the Code of Criminal Procedure provided for access, where appropriate, to State-funded translation or interpretation services throughout judicial proceedings. The death of a detainee was still subject to a thorough investigation, including investigation into whether the death was the result of natural causes. Concerning complaints of torture involving prison staff, the reform of the Internal Security Office of the State Police should strengthen the effectiveness and independence of investigators by placing them outside the control of the Prisons Governor of the institution under investigation. Detainees could submit their complaints to the Ombudsman, the prosecutor, the prison authorities, the administrative court, the Constitutional Court or the European Court of Human Rights, as appropriate. The Code of Criminal Procedure allowed victims of violent crimes, and therefore victims of torture, to seek redress at any stage of the proceedings.

6. **Mr. Kiluro** (Latvia) said that the number of deaths linked to cardiovascular disease in psychiatric hospitals was on a par with figures for the general population and did not reflect a lack of care. Among the approximately 80,000 patients detained in such establishments, there were many older persons receiving long-term medical care who were likely to suffer side effects that affected their cardiovascular system. Detailed statistics disaggregated by age were kept up to date.

7. **Mr. Citskovskis** (Latvia) said that the naturalization process did not preclude the acquisition of Latvian nationality by *jus soli* for children born to foreign nationals. Additional information on that subject was contained in the State party's written replies. Pursuant to legislative amendments adopted in order to give effect to the ratification of the Convention on the Rights of Persons with Disabilities and the decisions of the Constitutional Court, courts could decide to limit the material rights of persons with severe disabilities but under no circumstances their non-material rights. Any one with a disability could therefore freely apply for naturalization or a passport. Certain categories of persons with a mental disability or impairment were exempt from the knowledge and language tests usually required for naturalization.

8. **Mr. Makarovs** (Latvia) said that the law required the use of Latvian, or failing that, recourse to interpretation services, at all events organized by public entities. Such an obligation did not apply to private individuals or entities, except in very specific cases, namely matters of public interest involving consumer health, safety or protection. Cultural events were exempt, and communication within minority language communities was not regulated. Furthermore, the Public Demonstrations Act enshrined the right to freedom of expression, including the free choice of language.

9. **Ms. Lice** (Latvia) said that electoral law had been amended in accordance with the Committee's observations and since that time candidates must only demonstrate that their command of Latvian, the working language of the Parliament and municipal councils, was of a sufficient level to allow them to perform the functions related to their prospective mandate. On a separate note, persons sentenced to life imprisonment had the option of challenging their individual risk assessments.

10. **Mr. Vardzelashvili** asked under what circumstances the authorities could decide to consider an asylum application according to the fast-track process, how that process differed from the standard process and whether the deadline for appeal was 10 working days in all cases. Referring to paragraph 113 of the written replies, he asked why evidence of a risk of torture or ill-treatment or a threat to the life and security of a person was not considered grounds for refusing expulsion or extradition. He asked the delegation to clearly indicate whether the conviction of a person for a particularly serious crime was sufficient grounds for expelling or extraditing that person to another State, even if he or she might be subject to torture or ill-treatment. According to the information contained in paragraph 94, persons involuntarily detained in psychiatric hospitals could wait up to six days for a judge

to rule on the legality of their hospitalization. Lastly, he wished to know whether independent human rights bodies visited such establishments.

11. **Ms. Seibert-Fohr** asked whether all suspects including those arrested for administrative offences were brought before an investigating judge within 48 hours. It seemed as though some were held in police custody for days or even weeks at a time before being transferred to a detention centre. She asked the delegation to provide statistics on the average duration of detention on remand and the percentage of pretrial detainees in relation to the total prison population. She also wished to know whether the audit commission responsible for assessing conditions of detention had already submitted its report, whether the State party intended to introduce measures such as the use of bail or electronic tags and whether it planned to improve living conditions in the temporary detention centres in Dobele, Jelgava and Saldus, along with the central prison in Rīga and the prison in Jelgava. She also asked the delegation to comment on reports that evidence of physical sequelae was not automatically reported to the prosecutor in cases of ill-treatment.

12. **Ms. Waterval** asked whether persons with HIV or hepatitis B or C were included in statistics on persons awarded State compensation under the Victim Compensation Act contained in the annex to the written replies.

13. **Mr. Fathalla** asked why the State had ceased to subsidize programmes for national and ethnic minorities broadcast on State television and radio channels, and whether assistance had been provided for private Latvian and non-Latvian channels. He asked the delegation to comment on the question posed in paragraph 20 of the list of issues in the light of the adoption of the Electronic Media Act, which restricted broadcasts in languages other than Latvian on public and private channels, and to provide information on the outcome of the criminal proceedings related to the assault against journalist Leonīds Jākobsons in March 2012.

14. **Mr. Iwasawa** asked whether the initiatives described in paragraphs 151–153 of the report had served to increase the participation of ethnic minorities in political life at the national and local level. He wished to know how many Roma had been employed as teaching assistants in the comprehensive education system and whether they worked full-time. He enquired as to whether minorities had been able to voice their opinions on the amendments made to the Education Act in 2013 and whether they had been consulted during the development of language training programmes for non-Latvian speakers. According to reports, persons from a minority background could not attend university if they had a poor command of Latvian, and a bill to abolish the teaching of minority languages in State schools had been submitted in January 2014. He asked the delegation to comment on those reports, and on allegations that article 78 of the Criminal Code was interpreted in a restrictive manner, thereby resulting in some racist acts and comments going unpunished. Lastly, he asked whether, in the light of the findings of the Committee in the *Raihman v. Latvia* case (CCPR/C/100/D/1621/2007) and the recent Constitutional Court ruling in favour of the complainant using the original spelling of his name, the State party had considered revising the National Language Act of 1999.

15. **Mr. Zlătescu** asked what measures had been taken to guarantee the Roma access to education, professional training and the labour market and to ensure that their own cultural and linguistic diversity was reflected in the school curricula designed for them. He wished to know whether the history and culture of the Latvian Roma were taught in schools, in particular concerning the group's extermination by the Nazis during the Second World War, and whether the State party was implementing policies aimed at encouraging them to pursue a secondary and university education, in particular by providing them with scholarships.

The meeting was suspended at 11.35 a.m. and resumed at noon.

16. **Mr. Velšs** (Latvia) said that temporary detention facilities were located in police stations and were designed to accommodate persons under criminal investigation, suspects in police custody and convicted persons on the one hand, and persons suspected of certain administrative offences on the other. The two categories of detainee were held separately. As for administrative offences, detention could, in exceptional circumstances, last for up to 15 days. However, according to statistics for recent years, the average length of detention for criminal offences was 4 days. At present, there were 22 temporary detention centres in Latvia, with a total capacity of around 700 places. Five of those centres had closed, as the prison population had steadily declined. At present, the average occupancy rate stood at only 20 per cent. The Cabinet of Ministers had recently proposed discontinuing prison sentences for certain administrative offences, which would serve to further reduce the number of detainees. In May 2014, renovation work would begin in 10 detention centres across the country.

17. **Ms. Freimane** (Latvia) said that the audit commission's report would be published in April 2014, but that some of its conclusions had already been made public. It was already common knowledge that the Šķirotava prison and the disciplinary cells in Brasa prison in Rīga would close owing to their inadequate living conditions. In addition, the minimum cell size had been set at 4 square metres. At present, the majority of shared cells were partitioned so that there was a separate area for the toilets. The detainees in the central prison in Rīga and the prison in Jelgava were no longer kept in their cells for 23 hours a day and had, inter alia, the opportunity to practise sport and attend religious services. In the event of medical staff discovering injuries on a detainee's body, they automatically informed the Prison Governor. Special training would be given to medical personnel in 2014 on the detection and reporting of signs of ill-treatment. Detainees requiring medical treatment were taken to hospital and their medical expenses were paid for by the State. Detainees had guaranteed 24-hour access to emergency medical care.

18. **Mr. Citskovskis** (Latvia) said that the Act amending the Asylum Act, which had entered into force in November 2013, had been developed with a view to strengthening the principle of non-refoulement. A person could not be expelled if it would be contrary to the State party's obligations under international treaties. Only reasons of national security prompted expulsion; the reference to threats to public order had been removed. Appeals could be heard by the administrative courts regardless of whether they related to a standard or fast-track process. State-funded interpretation services were provided for asylum seekers.

19. **Ms. Kleinberga** (Latvia) said that Latvia had adopted social integration guidelines for 2012–2018 in 2001, which had been prepared with input from ethnic minority representatives. Cooperation with ethnic minorities was facilitated by several advisory bodies, including the Advisory Committee on National Minorities. As part of the Special Forum for Ethnic Minorities in October 2013 attended by over 200 organizations, working groups had discussed issues such as education and participation in public life. Initiatives had been designed to integrate the Roma within the European Union Framework for National Roma Integration Strategies up to 2020. The measures took into account the specificities of the very small Roma population in Latvia and had been incorporated into the social integration guidelines for 2012–2018. The State also conducted awareness-raising activities in regard to education with the support of the European Commission. NGOs representing the Roma had been involved in the design, implementation and evaluation of integration policies. The duty of remembrance in respect of war crimes was one of the requirements contained in the social integration guidelines.

20. **Ms. Arkle** (Latvia) said that the quality of education provided to the Roma was assessed annually by the Ministry of Education and Science. According to the data available, there were 112 Roma children attending primary and secondary school and 4 teaching assistants. Latvian language and foreign languages lessons were provided as part

of educational support. Lessons were taught in the Roma language in some schools. There were 800 primary and secondary schools in Latvia which were all subject, without exception, to the regulations of the Ministry of Education and Science. Improving the education of minorities and promoting their social integration featured among the priorities of the Ministry. Minority schools represented 26 per cent of all public schools; however, they not only took pupils from ethnic minority backgrounds. Statistics had shown that pupils of such schools achieved results in State examinations which were similar to, if not better than, those of pupils from other schools. The State funded the teaching of languages such as Russian, Polish, Hebrew and Belarusian, but placed emphasis on proficiency in Latvian, which was the language of higher education. All school curricula also included lessons on human rights, gender equality and tolerance.

21. **Mr. Makarovs** (Latvia) said that only State broadcasting corporations, namely Latvian radio and television broadcasters, received State subsidies. There was a Latvian State radio station which broadcast more than 8,000 hours of programmes in Russian per year. Many other media outlets also broadcast programmes in Russian or other languages, but subtitling was obligatory if the broadcaster was based in Latvia. Non-Latvian speakers therefore had numerous sources of information in their own language.

22. **Mr. Kišuro** (Latvia) said that, in regard to placement in a psychiatric hospital, the duration indicated by the delegation represented the legal maximum. The patient's file was considered within 72 hours by a board of experts that handed down a decision within 24 hours. The process could therefore take up to four days in all. The period of medical observation could not be reduced, as persons who had been involuntarily detained were often dangerous. Mental health establishments were inspected by the Health Inspectorate, which generally acted in response to a complaint, and by the Ombudsman's Office, whose role it was to defend the rights of patients. A bill amending the Medical Treatment Act aimed at strengthening protection for the private lives of persons involuntarily detained had been submitted to Parliament in response to the recommendations made by the Ombudsman in January 2014.

23. **Ms. Līce** (Latvia) said that special attention had been paid to hate crimes over the past two years. The main difficulties lay in drawing a line between freedom of expression and incitement to hatred; training police officers; strengthening trust between the public and the authorities, and defining the role of the media and schools in prevention. The Ministry of Foreign Affairs had drafted a report on the role of the State in that area based on the work of the Human Rights Committee and the European Commission against Racism and Intolerance and the jurisprudence of the European Court of Human Rights.

The meeting rose at 1 p.m.

measures by the Inter-American Commission on Human Rights in the case of Mr. Amerhane. The Committee had been informed that Ahmed Belbacha was also about to be transferred from Guantánamo to Algeria. How would his fate be monitored?

32. **Ms. Majodina** said that the Committee remained concerned about police brutality and the use of excessive force by law enforcement officials, particularly against Afro-Americans, persons of Latin American descent and undocumented migrants attempting to cross the border from Mexico. According to newspaper reports, no officials had been charged in relation to the deaths of 42 persons killed in incidents along the border with Mexico since 2005. Those killings violated the State party's own policy on the use of lethal force, whereby an officer could use it only when the person targeted by such force posed an imminent threat of seriously injuring or killing the officer or other persons. She asked whether there were official standards regulating the use of force by border patrols and, if so, what they were. She requested details on the training received by members of border patrols, whether statistics were kept on the use of force and whether the State party intended to bring the use of firearms by law enforcement officials into line with basic United Nations principles. She asked what oversight and compensation mechanisms were being put in place to address human rights violations arising from the excessive use of force by law enforcement officials. Noting that there had been more than 60 deaths in the State party since 2001 involving the use of Tasers, including in places of detention, she asked what was being done to curb their apparently indiscriminate use.

33. **Ms. Chanet** asked for information regarding so-called "stand your ground laws" in force in many states of the State party. Noting that a court jury had found itself unable to convict a private security guard in connection with the deadly shooting of unarmed 17-year-old Trayvon Martin in Florida in 2012, she asked whether the State party intended to have such laws amended in order to bring them into compliance with article 6 of the Covenant.

34. **Mr. Salvioli**, noting that a death-row inmate in Texas had recently been executed in spite of a request for interim measures by the Inter-American Commission on Human Rights and the fact that he had not received a fair trial, asked what the State party did to ensure that decisions by the Commission, whose work the United States purportedly supported, were respected in the various states in such situations.

35. **The Chairperson**, speaking as a member of the Committee, asked whether the State party was considering ratification of the Optional Protocol to the Covenant recognizing the competence of the Committee to receive and consider communications from individuals. Referring to questions raised by Mr. Shany regarding various state laws, he remarked that consideration should be given to the criminal liability of law professionals who published seriously flawed legal opinions, on the basis of which grave crimes were subsequently committed.

The meeting was suspended at 5.20 p.m. and resumed at 5.40 p.m.

36. **Ms. McLeod** (United States) said that the position of the State party with regard to the territorial scope of the Covenant, as set forth in article 2, paragraph 1, had not changed. The actions of the State party and its officials outside its territory were informed by its commitment to the rule of law and the principle of non-discrimination, due process, equal protection, and protection of human life and dignity. Many steps had been taken to prevent the use of torture by United States officials. Presidential Executive Order No. 13,491 on Ensuring Lawful Interrogations, of 22 January 2009, stated that individuals detained in any armed conflict would be treated humanely and would not be subjected to violence to life and person (including murder of all kinds, mutilation, cruel treatment and torture), nor to outrages upon personal dignity (including humiliating and degrading treatment), whenever such persons were in the custody of officials of the United States. The 2005 Detainee Treatment Act stated that "no individual in the custody or under the physical control of the

United States Government, regardless of nationality or physical location, shall be subject to cruel, inhuman, or degrading treatment or punishment". The terms of the treaty were applicable at all times and in all places, not just in the territory of the State party. It was a matter of policy that no persons should be forcibly removed to another country where there was a likelihood of them facing torture or cruel treatment.

37. **Mr. Washburn** (United States) said that more than 50,000 new housing units had been built in the previous five years in his country. The Federal Government was of the opinion that criminalization was not the solution to homelessness, and the Interagency Council on Homelessness was looking at a variety of approaches to the problem, including improved partnerships between housing agencies and social services, and between law enforcement agencies and social service-providers. Police officers required improved specialized training so as to deal with the homeless as persons requiring social services rather than as offenders. Re-entry services were needed for persons completing prison sentences, as former inmates were often the most vulnerable to homelessness. The Housing and Urban Development Department spent more than US$ 650 million a year on housing in Native Indian communities alone.

38. **Mr. Becker** (United States) said that the Administration of Salt Lake City, of which he was mayor, actively pursued a human rights agenda. Adults living in the same residence could enter their names on the mutual commitment registry to establish a relationship of mutual support. Same-sex marriage had been legalized in the State of Utah in December 2013. Since the city had embarked in 2006 on a plan to eliminate homelessness by 2016, the number of homeless people had fallen by 75 per cent. President Obama had launched an initiative to end homelessness among war veterans. That goal had been achieved in Salt Lake City, and other cities in the State party were attempting to follow suit. Funds and technical assistance had been provided by the Federal Government and cooperation at all levels of government had been the key to success.

39. **Mr. Swartz** (United States) said that the number of states applying the death penalty, the number of people on death row and the number of people who had been executed in the State party had declined over the previous decade. The death penalty as it was employed in the State party was consistent with article 6 of the Covenant, in that it was applied only in cases involving the most heinous crimes. The capital case review protocol was designed to ensure that the death penalty was imposed only in appropriate cases and in a non-discriminatory manner. At the Federal and state levels, all death penalty statutes must guide the discretion of the fact-finder and must narrow the class of offenders who could be subjected to the death penalty. Every convicted person was entitled to an individual review of the applicability of the penalty in his or her case. Juries must take into account any mitigating evidence. The Federal Department of Justice was working with the states to ensure the availability of defence counsel trained to deal with cases involving offences carrying capital punishment and to build their capacity.

40. Imposition of the death penalty on the basis of race was expressly prohibited. Nevertheless, the overrepresentation of Afro-Americans on death row was a matter of concern that continued to be studied by the Department of Justice. The Attorney General had announced the establishment of a racial disparity working group to study the matter. With regard to the narcotics used in lethal injections, federal courts were increasingly exercising their authority to hear constitutional challenges to state execution protocols and the use of certain drugs.

41. A post-conviction review procedure was in place and the number of cases of people who had been exonerated after sentencing could be seen as a vindication of the State party's justice system. Statutes on compensation for wrongful conviction were in place at the federal level, in the District of Columbia and in 29 states. Under the Federal Innocence Protection Act, persons who had been wrongly sentenced to death were entitled to US$

100,000 for every year wrongfully spent in prison. The Act also provided that states should compensate persons who had been wrongfully convicted.

The meeting rose at 6 p.m.

United Nations CCPR/C/SR.3045

International Covenant on Civil and Political Rights

Distr.: General
11 June 2014

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Human Rights Committee
110th session

Summary record of 3045th meeting
Held at the Palais Wilson, Geneva, on Friday, 14 March 2014, at 10 a.m.

Chairperson: Sir Nigel Rodley

Contents

Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Fourth periodic report of the United States of America (continued)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent *within one week of the date of this document* to the Editing Section, room E.5108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

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The meeting was called to order at 10.05 a.m.

Consideration of reports submitted by States parties under article 40 of the Covenant *(continued)*

Fourth periodic report of the United States of America (continued)
(CCPR/C/USA/4; CCPR/C/USA/Q/4 and Add.1; HRI/CORE/USA/2011)

1. *At the invitation of the Chairperson, the delegation of the United States of America took places at the Committee table.*

2. **The Chairperson** invited the delegation to reply to the questions asked by the Committee at the previous meeting.

3. **Mr. Hood** (United States of America) said that, since 2012, the substance injected in death row inmates in Mississippi was pentobarbital, an anaesthetic commonly used in surgery. Thanks to the current widespread recourse to DNA testing by the courts, victims of miscarriages of justice had been able to obtain justice. Each year, the sum of $30,000 in damages was paid to those wrongfully convicted or their relatives.

4. **Mr. Austin** (United States of America) said that, over the previous five years, 240 law-enforcement officers had been convicted of offences, while others were being prosecuted for racial profiling across the country. Regarding the case of the students killed or injured on the Kent State University campus during anti-Viet Nam war protests, in 1970 he said that eight public officials involved in the shooting had been tried in 1974 and had been acquitted for lack of evidence. Although new evidence had come to light that could undermine the ruling, the case could not be reopened because the statute of limitations had expired. Since 2011, five police officers had been prosecuted for misuse of an electrodirect (Taser) weapon. In Pennsylvania, a police officer who had used one against a suspect in handcuffs had been sentenced to prison. The National Institute of Justice was currently researching the dangers associated with the use of such weapons. In 2013, the Department of Justice had criticized the self-defence laws adopted by some states, on the grounds that they unduly broadened the concept and aggravated inter-community tensions. The United States Commission on Civil Rights was currently reviewing those laws to determine whether their provisions were discriminatory.

5. **Ms. Mack** (United States of America) said that 1,200 incidents had been reported since 2010, in which stones had been thrown at customs and border protection agents of the Department of Homeland Security. In 43 cases, the agents had responded with lethal force, killing 10 people. The Department had very recently issued guidelines clearly stating to personnel that firearms could be used only in case of imminent danger of death or grievous bodily harm. An emergency hotline had been set up for individuals to submit different types of complaints, including racial profiling by the police. Complaints were then referred to the Department's Office for Civil Rights and Civil Liberties. A number of awareness-raising activities had been carried out to ensure that the programme to increase community security and the agreements concluded pursuant to section 287 (g) of the Immigration and Nationality Act did not encourage more widespread racial profiling. The cases reported in the media of migrants in an irregular situation being repatriated while in hospital were the result of decisions taken by the hospitals concerned and did not in any way stem from government policy.

6. **Ms. Jones** (United States of America) said that the federal Government was taking steps to ensure that the Arizona law forcing civil servants to report migrants in an irregular situation did not dissuade such migrants from claiming the services and medical care to which they were entitled.

[redacted]

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[redacted]

[redacted]

United Nations CCPR/C/SR.3046

International Covenant on Civil and Political Rights

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19 March 2014

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Human Rights Committee
[illegible] session

Summary record of the 3046th meeting
Held at the Palais des Nations, Geneva, on Friday, 14 March 2014, at 3 p.m.

Chairperson: Sir Nigel Rodley

Contents

Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

Fourth periodic report of the United States of America (continued)

Organizational and other matters

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent *within one week of the date of this document* to the Editing Unit, room E.5108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

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The meeting was called to order at 3.05 p.m.

Consideration of reports submitted by States parties under article 40 of the Covenant *(continued)*

Fourth periodic report of the United States of America (continued)
(CCPR/C/USA/4; CCPR/C/USA/Q/1 and Add.1)

1. *At the invitation of the Chairperson, the delegation of the United States of America took places at the Committee table.*

2. **Ms. McLeod** (United States) said that her Government fully subscribed to the principle that States parties must implement their treaty obligations in good faith. However, under international treaty law it was the role of States parties to interpret the provisions of the treaties they ratified, unless the treaty stated otherwise, which the Covenant did not. While the United States and the Committee held principled differences of views regarding certain provisions, her Government respected the Committee's role and valued its views.

3. **Mr. Gross** (United States) said that every six months a review board assessed the conditions of detention of third-country nationals held by the United States in Afghanistan, while Afghan nationals had already been transferred to the custody of the Government of Afghanistan. A personal representative was appointed to assist detainees when they appeared before the review board. The detainees who remained at the facility in Guantánamo Bay continued to be detained lawfully. About 80 per cent of all detainees at that facility had been repatriated or resettled. The decision was made to transfer a detainee if senior Government officials judged that the threat posed by the detainee could be sufficiently mitigated by security measures taken in the receiving country. While no detainees currently held at Guantánamo had been cleared for release, a periodic review board process was under way to determine whether their continued detention was necessary. His Government had determined that current military practices were consistent with the provisions of the 1949 Geneva Conventions and Additional Protocol II to those Conventions. Military commissions at Guantánamo provided fundamental guarantees, such as the presumption of innocence and a prohibition of the use of coerced evidence.

4. President Obama had recently appointed two special envoys to continue to work towards the goal of closing the Guantánamo facility. Following the lifting of the moratorium on the transfer of Yemeni detainees, an inter-agency working group would review the detention of those detainees on a case-by-case basis. The Government had established appropriate procedures for the medical treatment of detainees at Guantánamo experiencing the adverse health effects of significant weight loss, including those on hunger strike. While federal litigation on the issue was ongoing, the procedures used were comparable to those used in the ordinary criminal justice system, which had been deemed lawful.

5. The United States was not currently detaining any person under 18 years of age in the context of armed conflict. On the occasions when it did so, it was to prevent them from returning to the battlefield and not to charge them with crimes. President Obama did not intend to remain on a perpetual war footing and had announced his plans for transition out of hostilities in Afghanistan by the end of 2014. Claims for compensation lodged by detainees, civilians or combatants were addressed under international humanitarian law. It was not the case that all military-age males in the vicinity of a target were deemed to be combatants.

6. **Mr. Washburn** (United States) said that in 2010 his Government had announced its support for the United Nations Declaration on the Rights of Indigenous Peoples, including the provision on free, prior and informed consent. All federal agencies had established policies on tribal consultations. Every year, President Obama met with tribal leaders at the

White House Tribal Nations Conference. The most recent Conference, held in November 2013, had been attended by representatives of the Forest Service and the Bureau of Land Management. While consultations did not always result in the satisfaction of indigenous peoples' demands, the compromises agreed on were always less harmful than the original action proposed.

7. By law, the power of tribal governments was strongest on their own tribal lands; in disputes concerning other lands the situation was more complex. In an effort to address that issue, the Obama Administration had thus far restored more than 250,000 acres of land to Indian tribes. While mining and other extractive industries had the potential to inflict great harm, indigenous peoples often took positions on both sides of the issue for economic reasons. For example, the Grand Canyon was a national treasure for all Americans, and any mining there would be subject to consultations both with Indian tribes and with the general public.

8. **Ms. Jones** (United States) said that federal law prohibited non-consensual medical treatment, but the specific rules on the question were largely governed by state law. The Protection and Advocacy for Individuals with Mental Illness Program operated throughout the country and supported state projects to investigate claims of human rights violations in mental health service settings. In 2012 the Program had received more than 18,000 complaints, of which about 13,000 had been settled. Medicare regulations set out detailed restrictions on the use of restraints to manage behaviour or restrict freedom of movement in hospitals, and implementation of those regulations was monitored by the Centers for Medicare and Medicaid Services. Comprehensive mental health services had been expanded since 2000 and would be expanded further under the Affordable Care Act. Many mental health facilities had eliminated or reduced the use of traumatizing or coercive practices. Strict regulations governed the conditions under which psychiatric medication could be involuntarily administered to inmates in federal prisons.

9. While there was no national paid maternity leave programme, the law provided flexibility so that employers could offer such leave if they so chose, while employees who did not wish to take maternity leave were not required to do so.

10. **Ms. Ramlogan** (United States) said that the Department of Homeland Security prioritized the removal of criminal aliens, recent illegal entrants and those who posed a threat to American communities, and that 98 per cent of the persons removed in 2013 had belonged to one of those three categories. In order to ensure public safety and attendance at removal hearings, some individuals were detained pending a decision on whether they should be removed. Steps had been taken to ensure that detention conditions were safe, secure and humane. Proceedings were under way in several courts in cases concerning detention prior to a removal order, and some courts had determined that bond hearings were required in such cases.

11. While Congress funded 34,000 detention beds per day, the actual number of detainees fluctuated. On any given day, 92 per cent of the detention space available was occupied by individuals subject to mandatory detention. Regarding the detention of asylum seekers, anyone who demonstrated a fear of persecution would be considered for release from detention, with very few exceptions. In 2013, the Department of Homeland Security had established policies and procedures to ensure that the parental rights of non-citizens were not impeded.

12. **Ms. Mack** (United States) said that no final decision had been taken on whether to release the report of the Police Executive Research Forum on the use of force. Following the 2010 Haiti earthquake, the Department of Homeland Security had halted all removals to Haiti and granted temporary protected status to Haitian nationals, which had been extended until January 2016. Removals to Haiti had resumed in early 2011, mainly affecting

perpetrators of serious offences. Her Government worked in cooperation with the Government of Haiti and NGOs to ensure that Haitians were returned in a safe and humane manner.

13. Her Government was taking measures to stop the trafficking and exploitation of workers. Regulations governing the H-2B worker visa programme prohibited abuses such as passing recruitment costs on to workers. While the National Labor Relations Act did exclude certain agricultural and domestic workers, those workers were covered by other federal statutes such as the Fair Labor Standards Act, and the limited reach of the National Labor Relations Act did not restrict the right to form trade unions for those not covered.

14. Non-citizens in removal proceedings could be represented by counsel of their choosing at no expense to the Government, and various steps had been taken to encourage pro bono legal representation for such persons. Judges were required to ensure that persons subject to removal proceedings were informed of potential forms of relief from deportation or removal. A video outlining the immigration removal process, entitled "Know Your Rights", was shown in English and Spanish to all detainees in facilities that held immigrants for more than 72 hours. Access to legal representation would be improved by the Senate's passage of the comprehensive immigration bill in 2013.

15. **Mr. Swartz** (United States) said that extradition was governed by treaty and administered by career professionals; in his Government's view, it did not raise any issues under the Covenant. Regarding the specific extradition cases mentioned by the Committee, Dr. Asch had been charged with mail fraud and tax evasion in relation to practices at the fertility clinic he ran, where embryos were allegedly transferred from female patients to other female patients without their knowledge or consent. His Government believed that the case was proceeding according to normal criminal procedures. The Supreme Court of Bolivia had stated that a supplemental request would be presented to the United States for the extradition of the former President of that country.

16. His Government was committed to preventing and prosecuting any abuses of solitary confinement. Prisoners must receive due process during disciplinary procedures before being placed in solitary confinement, and they must be kept in adequate conditions. While the Federal Bureau of Prisons did not house juveniles, 125 juveniles were currently under its charge and were being held in contracted facilities subject to restrictions on their conditions of confinement. Minors could be placed in solitary confinement only if that was necessary to protect themselves or others.

17. **Mr. Austin** (United States) said that the Federal Government did intervene in actions by state and local governments that it believed to be illegal. For example, in February 2014 it had issued findings on the illegal use of solitary confinement in Pennsylvania, and it was working with that State's government to bring its practices in line with United States law.

18. **Mr. Swartz** (United States) said that the vast majority of minors in conflict with the law were dealt with through the juvenile justice system; only in exceptional cases were they tried in adult courts. Various factors were taken into consideration when deciding whether to try them as adults, such as their age and prior criminal record and the seriousness of their offence. The National Centre for Youth in Custody provided free training and policy advice to state and local juvenile justice systems and had conducted a series of studies that suggested that the transfer of young people to adult courts might increase recidivism. The Prison Rape Elimination Act established important safeguards to protect young people in both juvenile and adult facilities. Minors in adult detention facilities must be kept separate from adults.

19. His Government took the position that the decisions in both the *Miller v. Alabama* and the *Graham v. Florida* court cases should be applied retroactively to persons serving

life sentences for offences committed when they had been minors, and legislation to implement those decisions was currently being drafted. However, the United States Sentencing Commission had not so far made any recommendation to revise the existing statutes on life sentences without possibility of parole for adult offenders.

20. The intelligence activities of the National Security Agency were the subject of ongoing debate. The intelligence programmes in question were lawful under United States law, involved gathering information only for foreign intelligence or counter-intelligence purposes, and did not challenge the freedom of expression or disadvantage any particular group on discriminatory grounds. The programmes were subject to rigorous oversight at multiple levels, including executive, congressional and judicial, for example through the Foreign Intelligence Surveillance Court.

21. At the close of a review of the operations of the State party's security agencies in January 2014, President Obama had announced a series of supplementary safeguards. Some had been put into immediate effect by Presidential directive and the remainder would be sent to Congress for consideration. The President had announced that the approach to the collection of metadata from telephone communications would be altered. The metadata could, in any case, be accessed only for counter-terrorism purposes and had been used only on limited occasions. Similarly, the bulk collection of communications data was carried out for strictly defined national security purposes. Mr. Obama had underlined that the safeguards would apply worldwide. On the subject of mental torture, including through the use of mind-altering drugs, he said that the State party had endeavoured to ensure that the full range of conduct in that regard was addressed by national legislation.

22. **Mr. Austin** (United States) said that the "stop-and-frisk" lawsuit involving New York City and the New York Police Department had been returned to the District Court, where a resolution including provision for a mechanism to monitor compliance would be the likely outcome. New York City, however, had not withdrawn its appeal against the original ruling in the case.

23. The use of corporal punishment and restraint in schools was a matter for the states, 30 of which had outlawed it. The Federal Government was committed to promoting equal access to education for children with disabilities and was asking the remaining states to minimize the use of corporal restraint in schools. The Department of Education had issued a guidance document on non-discrimination in schools. There was, however, a need to strike a balance between access to education for all and discipline. Corporal punishment in the home was accepted in the United States, but parenting programmes and home visitation providers sought to guide parents away from physical punishment.

24. Combating domestic violence and protecting women from violence, including sexual assault, dating violence and stalking, was a high priority for the Government, as were the provision of compensation for victims and the prosecution of perpetrators. President Obama had recently appointed, for the first time in the country's history, an adviser on violence against women to work with the law enforcement agencies. The Office on Violence against Women in the Department of Justice had thus far awarded more than US$ 4.7 billion in grants for victim services and had adopted a multifaceted approach in order to implement the 1994 Violence against Women Act, which had been strengthened in 2013. Federal, state and local police forces worked closely with prosecutors and victims' rights associations to combat the problem effectively.

25. **Mr. Hood** (United States) said that federal grants had been used to finance awareness programmes in schools in the State of Mississippi aimed at preventing domestic violence. The State's protective order registry and registry of conviction orders were linked to a system of background checks for gun ownership, which aimed to prevent the sale of firearms to persons with a criminal record. Other states were implementing similar systems,

which in Mississippi had led to a significant decrease in the number of cases of domestic homicide. Responding to a question by Mr. Kälin, he said that Phenobarbital was approved by the Food and Drug Administration for use as an anaesthetic.

26. In most states where corporal punishment was still permitted in schools, parents could elect to have their children exempted. Children suspended from school in Mississippi were sent to alternative schools so that they might continue to receive an education. Legislation relating to juveniles who had received sentences of life imprisonment without parole was retroactive in Mississippi and all offenders who had received such sentences when under the age of 18 would be resentenced. Recent "stand your ground laws" passed in some states had gone beyond the original intention of earlier legislation on the matter. Mississippi had long-standing and satisfactory self-defence legislation, which complied with the Covenant, and had not adopted more recent, standardized models.

27. **Mr. Austin** (United States) said that, under the Constitution, the Federal Government and the states were responsible for determining voting rights. Congress was entitled to pass laws in that regard. Since the landmark Shelby County decision, federal lawsuits had been brought under the Voting Rights Act against states that had changed State voting laws. Persons convicted of crimes were not necessarily informed before sentencing that they would lose their right to vote. Whether residents of Washington D.C. should be afforded voting rights in Congress remained a subject of conjecture.

28. The current Administration was committed to removing barriers to reproductive health-care services, including abortion. Persons denying such access had been successfully prosecuted under the Freedom of Access to Clinic Entrances Act. The Department of Education was investigating allegations relating to violations of the right to freedom of expression in four federally-funded universities. To date, it had found no evidence for the allegations in three of them. It was Department policy that freedom of opinion must be upheld in all educational institutions.

29. **Mr. Becker** (United States) said that a variety of mechanisms for reviewing complaints of excessive use of force by law enforcement officials operated in cities across the country. Police officers were trained on how to react appropriately in violent situations and on the limits imposed on the use of force. In Salt Lake City, complaints regarding the excessive use of force by law enforcement officials were subject to internal police review. They could also be considered by the independent Civilian Review Board, the conclusions of which were forwarded to the mayor and chief of police. Its decisions were, as a rule, implemented and action could include dismissal of the police officers concerned.

30. **Mr. Austin** (United States) said that the Civil Rights Division of the Department of Justice had agreements with law enforcement agencies and penitentiary establishments providing for effective complaint mechanisms.

31. The Federal Government was working tirelessly through Government bodies such as the departments of State, Justice and Labor, and with NGOs and other Governments, in particular that of Mexico, to combat human trafficking. Most states in the State party had passed anti-trafficking laws. The provision of counselling, housing and education for victims, the prosecution of perpetrators and the training of law enforcement officials to identify victims of human trafficking were all important elements of the State party's strategy to curb the scourge of trafficking. Although prostitution was a crime in the United States, the authorities adopted a victim-centred approach to the matter.

32. **Mr. Kälin** asked whether it was true that asylum seekers were released from detention only when asylum was granted. Did mandatory deportation of foreign nationals whose asylum applications failed to apply even to those who had committed only minor offences or whose dependants were United States citizens? Surely it was inhumane to hand persons over to another State knowing that they would be tortured or murdered.

33. **Ms. Majodina** asked when the Guantánamo Bay prison facility might eventually be closed and, if it was, whether the State party would then renounce the practice of administrative detention. It was surprising that the states could each regulate the non-consensual administration of medication. Had any of them considered prohibiting the practice, as had been recommended by the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment in 2013? The Federal Government should ensure that such recommendations were taken seriously by the states. Federal regulations regarding the use of solitary confinement did not comply with the Covenant and there was no requirement to separate juveniles from adults in places of detention. The Prison Rape Elimination Act had achieved little and none of the states had certified that it was in compliance with the Covenant in that regard. As a result, people as young as 16 were being tried in the adult justice system.

34. **Mr. Shany** asked whether the Department of Justice had considered opposing the broad application of sentences to life imprisonment without parole before the Sentencing Commission. He would like to know under what specific law the perpetrators of acts of mental torture could be prosecuted. He also asked whether persons wrongfully serving prison sentences were made aware of the possibility of the restoration of their rights. Noting that the delegation did not contest the fact that it was not in compliance with the Covenant with regard to the voting rights of residents of Washington D.C., he suggested that there was no political will to remedy the situation. The State party should give greater weight to the Covenant rather than leaving it hostage to the political whims of Congress.

35. **Mr. Salvioli** said that article 9 of the Covenant covered cases of persons who were tried repeatedly for the same alleged offences, which constituted deprivation of liberty. He asked whether the State party intended to make an official apology to its indigenous peoples for its treatment of them in the past.

36. **The Chairperson**, speaking as a member of the Committee, asked whether the policy of prosecuting prostitutes in the State party did not make it difficult to identify victims of trafficking and to track down traffickers.

The meeting was suspended at 4.45 p.m. and resumed at 4.55 p.m.

37. **Ms. Ramlogan** (United States) said that immigration officers assessed in the first instance whether asylum seekers had a well-founded fear of returning to their home country, and took that into consideration when deciding whether to release them from detention. Decisions on the forced removal of individuals were taken by Department of Homeland Security officers on a case-by-case basis, and included consideration of whether they had community ties in the United States and/or had a spouse, children or parents with United States citizenship or who were permanently resident in the State party. Their criminal record was also taken into account.

38. **Mr. Swartz** (United States) said that the procedure in place for dealing with extradition requests, which was governed by treaty and subject to judicial review, provided individuals with sufficient means to challenge their extradition. His Government was therefore of the view that neither of the two particular cases that had been raised reached the level of a matter appropriate for review by the Committee. With regard to non-refoulement, he wished to make clear that his Government fully understood, and remained committed to, its obligations in that regard.

39. As to life sentences without parole, there were currently no proposals made to or by the Sentencing Commission in that connection. He stressed, however, that the Attorney General constantly considered how sentencing could most appropriately be administered to ensure that justice was done.

40. On the question of obligations regarding mental torture at the federal and other levels of government, it was indeed the case that the provisions of the Torture Victim Protection Act did not fully cover the scope of the legal remedies available. For instance, regarding mental torture committed within the United States, a number of possibilities for prosecution existed under various pieces of legislation covering conduct violating constitutional rights, in particular the right to be free from cruel and unusual punishment. At the state level, there were a variety of laws that might be applicable, such as state assault laws and stalking laws. A number of states had, in a variety of contexts, enacted provisions that were in line with those contained in the American Law Institute's Model Penal Code, which suggested that assault should include attempts by physical menace to put another in fear of imminent serious bodily injury.

41. **Mr. Gross** (United States), responding to a question regarding continued detention, said that under the Authorization for the Use of Military Force Statute his Government retained the authority to detain enemy personnel as long as the United States remained in an armed conflict with Al-Qaida and its associated forces.

42. **Ms. Jones** (United States) said that her delegation was currently unaware of any states that had taken action in response to the recommendation made by the Special Rapporteur on Torture to the effect that a ban should be imposed on all non-consensual medical treatment.

43. **Mr. Austin** (United States) said that there was no national requirement for juveniles to be kept separate from adult offenders in detention. In practice, however, at the federal level no juveniles were detained in prisons and those in other places of detention were held separately from adults. At the state level, the Government worked closely with the authorities, providing training, guidance and incentives to ensure that such separation was maintained.

44. **Mr. Hood** (United States), referring to practice in the State of Mississippi, said that although juveniles could in some instances be held in a prison facility, they must be kept out of sight and sound of adult inmates. He had been unable to obtain information as to whether such a rule was being applied in other states but he would raise the question with the National Association of Attorneys General.

45. As to the question of the treatment of victims of human trafficking, a special unit within the Attorney General's Office provided all law enforcement officials in Mississippi with training on handling trafficking situations to ensure that those involved were treated as victims and received appropriate services, including medical care. It was only in the event of a failure on the part of victims to cooperate with the authorities that prosecutions would be brought against them in an attempt to identify the perpetrators of the crimes concerned.

46. **Mr. Austin** (United States) said that a "victim-first approach" was also aligned at the federal level when dealing with individuals who were truly trafficking victims. In the case of victims who were United States nationals this approach allowed for, among other things, the provision of relevant services and charges to be removed. With respect to aliens, the Department of Homeland Security granted victims of trafficking both short and long-term immigration benefits in the form of T and U visas.

47. There was no national guarantee ensuring that defendants and prisoners were made aware of the loss of the right to vote. However, in practice, whenever defendants took a plea or were sentenced, they were informed of the fact that they would lose certain constitutional rights. Furthermore, the American Bar Association had launched a website entitled the National Inventory on the Collateral Consequences of Conviction as part of an effort to help defence lawyers fully inform their clients of, inter alia, any rights they would lose as the result of a conviction for a crime.